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Exhibit 5

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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Petition of)	
NorthWestern Energy for the)	
Commission to set Terms and Conditions)	REGULATORY DIVISION
of Contract between NorthWestern)	
Energy and Greenfield Wind, LLC)	PETITION
)	
)	DOCKET NO. D2014.4.43
)	

**PETITION FOR AN ORDER SETTING THE TERMS AND CONDITIONS OF A
CONTRACT BETWEEN NORTHWESTERN ENERGY AND GREENFIELD WIND,
LLC**

I. Introduction

Pursuant to § 69-3-603, MCA (2013), NorthWestern Corporation doing business as NorthWestern Energy ("NorthWestern") petitions the Montana Public Service Commission ("Commission") to set terms and conditions to be included in a Power Purchase Agreement ("PPA") between NorthWestern, as buyer, and Greenfield Wind, LLC ("Greenfield"), as seller.

For the reasons set forth below, NorthWestern and Greenfield are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by NorthWestern.

I. Introduction

On Sunday, March 16, 2014, Martin Wilde of WINData, LLC sent an email in which he asserted that Greenfield Wind, LLC had created a legally enforceable obligation (“LEO”) for a 25 MW project (“Greenfield Project”) and demanded the immediate execution of a PPA at the Electric Tariff, Schedule QF-1, Option 1(c) rate. On March 16, 2014, Mr. Wilde attached a PPA; a letter from him to NorthWestern employees Frank Bennett and Bleau LaFave; a Small Generator Interconnection Agreement (“SGIA”) for Greenfield Wind, LLC, a 10 MW project; and an SGIA for Greenfield Wind Two, a 15 MW project. Mr. Wilde’s email is attached to this Petition as Exhibit NWE-1. On March 18, 2014, Martin Wilde sent an email to which he attached a FERC Form 556 – Certification of Qualifying Facility (“QF”) Status for a Small Power Production of Cogeneration Facility, for Greenfield Wind, LLC in which Greenfield Wind, LLC self-certified a 26 MW project. The March 18, 2014 email with attachment is attached to this Petition as Exhibit NWE-2. On April 3, 2014, Mr. Wilde sent an email in which he stated, in part, “We have updated and attached the PPA that creates a legally enforceable obligation (‘LEO’) under 18 C.F.R. § 2925.304(d)” and attached a PPA and the same two SGIAs that were attached to his March 16 email. The April 3, 2014 email is attached to this Petition as Exhibit NWE-3. During this period (March 16 – April 3), Greenfield was negotiating with NorthWestern to sell its output under another process. Mr. Wilde asked NorthWestern not to respond to Greenfield’s request for a QF PPA until after the negotiations were resolved. On April 16, 2014, Greenfield withdrew from the negotiations in the other process.

The Commission's administrative rules require that a QF greater than 3 MW ("Large QF") in size be selected in an all-source solicitation to receive a long-term contract for sale of energy and capacity. ARM 38.5.1902(5). However, on March 20, 2014, the Federal Energy Regulatory Commission ("FERC") issued a Declaratory Order finding that ARM 38.5.1902(5) is inconsistent with the Public Utility Regulatory Policies Act of 1978 ("PURPA") and FERC's regulations implementing PURPA. *Hydrodynamics Inc.*, 146 FERC ¶ 61,193 (March 20, 2014). NorthWestern believes that this rule precludes it from negotiating a long-term contract with a Large QF unless the Large QF has been selected in an all-source solicitation. The Greenfield Project has not been selected in an all-source solicitation. NorthWestern is in the untenable position of being constrained by an administrative rule that FERC has found to be inconsistent with federal law. Therefore, NorthWestern requests the Commission to set the terms and conditions for a PPA between it and Greenfield.

II. Issues

This Petition presents three issues:

1. What rate may NorthWestern pay Greenfield?
2. What security is adequate security to guarantee Greenfield's performance?
and
3. Has Greenfield incurred an LEO?

NorthWestern requests that the Commission find that it may pay Greenfield \$47.78/MWh if environmental attributes are included and \$34.77/MWh if environmental attributes are not included, less the incremental cost of network transmission service that NorthWestern would not otherwise incur, less the cost of transmission congestion, and less the incremental regulation cost that NorthWestern would not otherwise incur. In this Petition, NorthWestern estimates the

incremental cost of network transmission service to be \$2.00/MWh and the incremental regulation cost to be \$47,861/month. NorthWestern does not have an estimated cost of transmission congestion at this time and will update this filing when it does. NorthWestern reserves the right to update the incremental cost of network transmission and the incremental cost of regulation as more information becomes available during the pendency of this docket.

NorthWestern requests that the Commission find that adequate security to guarantee Greenfield's performance is \$1,500,000.00 and that the security, either in cash or an irrevocable letter of credit, that must be deposited within 15 days of the earlier of the execution of a PPA or the creation of an LEO.

NorthWestern requests that the Commission find that Greenfield has not created an LEO because it has not made an unconditional offer to sell energy and capacity from the Greenfield Project at NorthWestern's avoided cost and because it has not provided adequate security under the circumstances.

III. Argument

A. NorthWestern may pay Greenfield no more than its avoided cost for a 25 MW wind project at the Greenfield Project's location.

Federal law requires NorthWestern to purchase the energy and capacity from the Greenfield Project. *See* 16 U.S.C. § 824a-3(a)(2). NorthWestern may not pay a rate that exceeds the incremental cost that it would pay but for the purchase from the QF. *See* 16 U.S.C. § 824a-3(b) and 18 C.F.R. § 292.304(a)(2). There are several ways that state regulatory bodies determine avoided cost. The Commission uses a combination of projected market and surrogate avoided resource with elements of the component/peaker method to determine the avoided cost for the Electric Tariff, Schedule No.QF-1, Option 1 ("QF-1, Option 1") rates. However, this method is not appropriate for Large QFs because it does not consider the generating

characteristics, such as the ability to dispatch, the available firm capacity during peak periods, the usefulness of the energy and capacity during emergencies, incremental transmission service costs, and incremental wind integration costs. These costs will vary with the nature of the resource, particularly a wind regime; the size of the resource; the other resources in the electricity supply portfolio; the location of the project; and transmission constraints. Failure to consider these factors on an individual basis will lead to erroneous calculations of the costs that a QF allows a utility to avoid. While these errors may be acceptable for small QF resources, they are not acceptable for Large QFs. The Greenfield Project, for example, could supply more than 5% of NorthWestern's load during light loading hours.

1. NorthWestern calculated the avoided cost for the Greenfield Project using the Differential Revenue Requirement Method.

The Differential Revenue Requirement Method calculates avoided costs by estimating the utility's total revenue requirement for the term of the contract with the QF at zero cost and without the QF. The difference between the two revenue requirements is the total value of the QF, which is then allocated to capacity and energy over the term of the contract.

NorthWestern estimated the electricity supply portfolio cost without the Greenfield Project and with the Greenfield Project using the Ascend Analytics PowerSimm modeling program. This powerful modeling tool considers the variability of load, the variability of the specific output of the Greenfield Project using data provided by Greenfield as well as the variability of other resources in the electricity supply portfolio. This stochastic method of calculating the differential revenue requirement, while not perfect, is the best tool for capturing all of the known variability for portfolio costs.

QFs eligible for QF-1, Option 1 rates have a choice regarding the treatment of environmental attributes. NorthWestern has assumed that Large QFs should have that same

choice and calculated the Differential Revenue Requirement with estimates of carbon costs impact on market prices and without. A Large QF that is willing to transfer its RECs to NorthWestern as part of the sale of its energy and capacity should receive the rate derived from the Differential Revenue Requirement with carbon costs. A Large QF that intends to retain its RECs, or to sell them separate from its energy and capacity, should receive the rate derived from the Differential Revenue Requirement without carbon costs.

As the Prefiled Direct Testimony of Bleau LaFave (“LaFave Direct Testimony”) shows, the levelized rate for Greenfield based on avoided costs derived from the Differential Revenue Requirement that includes carbon costs is \$47.78/MWh; the rate that does not include carbon costs is \$34.77/MWh (before adjustment for other factors).

2. *NorthWestern calculated the incremental cost of network transmission service that it will incur to purchase the energy and capacity from the Greenfield Project.*

Greenfield is responsible for its interconnection costs—those costs that are directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations. 18 C.F.R. § 292.101(b)(6). However, interconnection does not include transmission service. NorthWestern is required to obtain the transmission service needed to deliver Greenfield’s output from the point of interconnection to NorthWestern’s load. *See Entergy Services, Inc.*, 137 FERC ¶ 61,199 at ¶ 52 (2011), *order on reh’g*, 143 FERC ¶ 61,143 (2013). Transmission costs directly related to necessary facilities that are not included in interconnection costs may be accounted for in the determination of avoided costs. *See Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, n. 73 (2013). Failure to include consideration of the incremental cost of network transmission service in the determination of avoided costs will result in NorthWestern’s customers paying more for energy and capacity from Greenfield than they

would for alternative energy and capacity. If NorthWestern's customers pay more, the principle of customer indifference is violated.

The Greenfield Project is located in an area with the highest transmission congestion as shown on the Congestion map available on NorthWestern's Open Access Same-Time Information System, or OASIS. NorthWestern would not build a wind project in the same area. While Greenfield has had its project studied for interconnection as an energy resource¹, NorthWestern has not conducted an in-depth study of the availability of network transmission service for the length of the contract. However, preliminary analysis estimates that network transmission service from the Greenfield Project will require at least \$31,200,000 in network upgrades, of which \$2,250,000 is attributable to Greenfield (given its place in the Transmission Service Request queue). This is the equivalent of \$2.00/MWh that must be subtracted from the rate based on the appropriate Differential Revenue Requirement analysis. NorthWestern reserves the right to and will update this amount when the study is completed.

3. *NorthWestern calculated the incremental wind integration cost that it will incur to purchase the energy and capacity from the Greenfield Project.*

Greenfield is responsible for its wind integration costs. Since it is not eligible for Schedule QF-1 standard offer rates, it also is not eligible for the Schedule WI-1 wind integration rates. WI-1 provides, "Applicable to any Wind Generator who enters into an Agreement with the Utility for the sale of electric power to the Utility under Schedule No. QF-1." Electric Tariff, Schedule No. WI-1, 2nd Revised Sheet No. 80.1.

NorthWestern's planned capacity to provide wind integration from the Dave Gates Generating Station ("DGGS") is used. NorthWestern built DGGS with 45 MW of regulation

¹ Greenfield may have been studied improperly for interconnection. WINData presented two projects that qualified for small generator interconnection procedures. The limit for small interconnection is 20 MW. Now WINData presents the Greenfield Project as one 25 (or 26) MW project in its request for a PPA and in its FERC Form 556. This project should have been processed under the large generator interconnection procedures.

devoted to wind integration. Currently, with projects under construction, NorthWestern has 238 MW of wind connected to its system, including 20 MW under construction. Under NorthWestern's conclusion that wind generators require 23% of their nameplate capacity for wind integration, the connected wind generation has used the planned capacity. Likewise, under the Commission's zonal analysis based on 38%, 14%, and 5.1% of regulation as a percent of nameplate capacity, the connected wind generation has used the DGGs' planned capacity.

Integrating additional wind generation, such as Greenfield, will require an expansion of DGGs. NorthWestern estimates that this can be done for the same value per MW as the initial construction. This build-out cost results in an incremental wind integration cost of \$47,861/month that must be subtracted from the rate based on the appropriate Differential Revenue Requirement analysis.

NorthWestern requests that the Commission set the rate for purchase of energy and capacity at \$45.78/MWh less \$47,861/month if Greenfield chooses to transfer its environmental attributes and RECs or \$32.77/MWh less \$47,861/month if Greenfield chooses to retain its environmental attributes and RECs, subject to adjustment of the incremental network transmission service cost and inclusion of the transmission congestion cost during this docket.

B. Adequate security for Greenfield is \$1,500,000 to be provided within fifteen days.

Once Greenfield has incurred an LEO or NorthWestern and Greenfield have executed a PPA, NorthWestern must account for the future output of the Greenfield Project in its resource planning and acquisition process. NorthWestern must make a transmission service request for network transmission service from the Greenfield Project. NorthWestern will need to begin the process to acquire additional wind integration resources. NorthWestern will incur substantial expense in accommodating a new 25 MW wind project and may enter into binding agreements

that would not be needed, but for the intended purchase of the Greenfield Project output.

NorthWestern, for itself and its customers, must be sure that these actions are necessary.

The majority owner of Greenfield, who is also the developer of the project, WINData LLC (“WINData”) has a checkered history in its transactions with NorthWestern. WINData, through its subsidiaries and affiliates, has entered into and then breached contracts, has entered into and then flipped contracts, has sought multiple contracts for the same projects at the same time, and has repeatedly failed to provide adequate security. This history demands that Greenfield provide adequate security.

Examples of current and prior dealings with WINData demonstrate the need for adequate security. WINData offered the Greenfield Project as a Community Renewable Energy Project (“CREP”) in NorthWestern’s 2013 CREP RFP for 2014 operation. NorthWestern identified Greenfield an alternate. Until April 16, 2014, while WINData had asserted it has created a QF LEO for Greenfield, it was also negotiating to sell its output as a CREP.

WINData offered the Crazy Mountain Wind Project (“Crazy Mountain”) in NorthWestern’s 2013 CREP. NorthWestern selected Crazy Mountain, negotiated a PPA, and proceeded to plan for the output. However, WINData has not provided the security required by the PPA. Although WINData has not notified NorthWestern that it intends to breach the PPA, NorthWestern believes that WINData may not cure the current default. WINData has asserted that it has created a QF LEO for Crazy Mountain without regard to the existing PPA.

WINData is the original developer of the Fairfield Wind Project. In September 2011, Fairfield Wind LLC (“Fairfield”) entered into a QF PPA. Fairfield failed to provide any security by the due date. After notice and expiration of the cure period, NorthWestern terminated the PPA. Fairfield signed another PPA with a guaranteed commercial operation date of December

31, 2012. WINData transferred its interest in the Fairfield Project to Lincoln Renewable Energy, who provided security, asked for modification of the PPA, and offered the Fairfield Project to NorthWestern as an asset sale. NorthWestern believes that Lincoln Renewable Energy transferred the Fairfield Project back to WINData, who then transferred the majority of Fairfield to Foundation Wind ("Foundation").² Foundation initially requested modifications to the contract but has since proceeded with construction. Foundation has paid its delay damages and maintained the adequate security

Given WINData's history of failure to provide security and then breaching contracts, and given that NorthWestern will incur substantial expense in anticipation of receiving the output of the Greenfield Project, it is imperative that Greenfield be required to post security within a short, but reasonable, time. The amount of security is commensurate with the amount of security that other projects have provided when project size, timing, and additional expense are considered.

C. Greenfield has not incurred a legally enforceable obligation.

Greenfield asserts that it has created an LEO. It has not. In Order No. 6444e, the Commission ruled:

To establish an LEO, a QF must tender an executed power purchase agreement to the utility with a price term consistent with the utility's avoided costs, with specified beginning and ending dates, and with sufficient guarantees to ensure performance during the term of the contract, and an executed interconnection agreement.

In the Matter of the Petition of Whitehall Wind, LLC for QF Rate Determination, Docket No. D2002.8.100, Order No. 6444e, ¶ 47 (June 4, 2010).

² WINData did not inform NorthWestern of the transfer to Lincoln Renewable Energy, the transfer back to WINData, or the transfer to Foundation Wind. NorthWestern learned of these transfers when agents of Lincoln Renewable Energy and Foundation Wind contacted it and when it reviewed amended Form 556s that were filed with FERC.

Greenfield has not met these requirements because (1) the PPA that it tendered has a price term that is not consistent with NorthWestern's avoided cost for a 25 MW wind project located in Teton County beginning commercial operation by December 31, 2015 and (2) the PPA that it tendered does not have sufficient guarantees to ensure performance.³

Greenfield has requested a rate based on a stale calculation of avoided cost for smaller projects, has not adjusted the avoided cost to account for the incremental cost of network transmission service or transmission congestion, and has not adjusted the cost to account for the incremental cost of wind integration.

Greenfield has offered to provide \$500,000 in security ninety business days after a PPA is executed. This security is inadequate in amount and timing. Furthermore, a mere offer of security, given WINData's repeated failures to provide security in a timely manner, is not a sufficient guarantee.

IV. Prayer for Relief

For the reasons stated above, NorthWestern respectfully requests that the Commission issue an order finding that:

1. NorthWestern may pay Greenfield the amount set forth above for the output of the Greenfield Project;
2. Greenfield must provide adequate security of \$1,500,000 within fifteen (15) days of NorthWestern executing a PPA reflecting the price set forth above; and
3. Greenfield has not incurred a legally enforceable obligation.

³ NorthWestern does not concede that Greenfield has met the requirement of an executed interconnection agreement. As described above, Greenfield tendered two SGIsAs rather than a single LGIA for the Greenfield Project. This evasion of the large generator interconnection process may render the SGIsAs inapplicable.

RESPECTFULLY SUBMITTED this 23rd day of April 2014.

NORTHWESTERN ENERGY

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